

THE UNDER SECRETARY OF STATE
WASHINGTON

December 7, 1970

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NSC UNDER SECRETARIES COMMITTEE

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MEMORANDUM FOR THE PRESIDENT

SUBJECT: Possible Actions Against Countries
Which are Uncooperative on Hijacking

The Under Secretaries Committee has prepared the enclosed memorandum in response to Dr. Kissinger's request of October 31. Section I of the memorandum lists by category those countries which have been or might be expected to be uncooperative in taking steps to protect the lives and property of United States citizens when hijacked planes are landed there. Section II indicates the full range of possible multilateral and bilateral sanctions we might use against such countries. Section III analyzes the actual situation in a number of specific countries to indicate the concrete problems which will be posed in using these sanctions in any particular instance.

Both the Department of Defense and the JCS feel that the study is deficient with regard to "political-military implications" as indicated in Mr. Packard's attached memorandum to me. The Committee has assumed, however, that an analysis of possible military sanctions was not called for at this time. We have, therefore, dealt only with non-military sanctions.

Our general conclusion is that while the United States could apply bilateral economic sanctions against a number of uncooperative states, such application is likely to be costly and may not substantially affect such states' behavior. While economic sanctions can hurt, politically

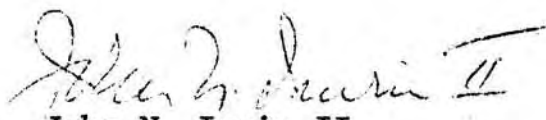
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motivated behavior can usually withstand substantial pain. In the case of some states, such as North Korea, North Vietnam and mainland China, there are no bilateral sanctions available short of military action. Multilateral sanctions which would combine economic and political pressure may be more helpful, but will have to overcome the general reluctance of most Western European countries to become involved in the actual implementation of sanctions.

The Under Secretaries Committee believes that we should concentrate our efforts in this field in continuing to urge the states involved in particular cases to take effective action, even before new treaties are in effect. We should also continue our efforts to create a more effective international legal framework. As you know, we are now working to establish by treaty an international legal obligation to extradite or prosecute hijackers and saboteurs and an international legal framework for the imposition of multilateral sanctions, including the suspension of air services.


John N. Irwin II
Chairman

Enclosure:
As stated.

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Possible Actions Against Countries Which
Are Uncooperative on Hijacking

SECTION I - Dimensions of the Problem

In our view, the actual or potential failure of a state to cooperate to protect the persons or property of US citizens after a hijacked plane lands involves factors beyond that state's anti-US political orientation or ideology. To understand these failures, one must examine both the actions of states which have participated in or condoned similar behavior (regardless of whether US citizens or property were targets) and the reluctance of other states to aid in the development and implementation of the strong international aviation legal framework which the President considers necessary to deter and to levy sanctions against this type of behavior. States responsible, in varying degrees, for these failures might be divided into five groups.

A. States where hijacked aircraft landed and in which US passengers have been unreasonably detained or US property destroyed with state participation or with no action taken against identified participants in the act. These states include (as explained in more detail in Section III), Jordan, UAR,* Lebanon, Syria and, in one recent instance, Cuba. Cuba has, however, normally cooperated in protecting US lives and property and returning them without delay.

B. States where hijacked aircraft landed and in which non-US passengers have been unreasonably detained or non-US property destroyed with state participation or with no action taken against identified participants in the act. These states include Cuba, Algeria, which unlawfully detained an Israeli aircraft and some Israeli

* The UAR has taken the hijackers of the PAA 747 into custody, but it is not clear whether they will be prosecuted.

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passengers, and Turkey, which held a small hijacked Soviet aircraft, and has also yet to complete action against two Soviet hijackers who killed a crew member and injured two others. North Korea has held for almost a year an ROK civilian passenger aircraft, several passengers and the crew.

C. States which have espoused "revolutionary" causes and which, valuing these causes above the accepted standards of international aviation, might find it attractive to cooperate with revolutionary hijackers or at least find it difficult to take action against such hijackers. Arab states such as Iraq, Libya and the Sudan may fall into this category; other "third world" states in Asia and Africa such as Pakistan and Tanzania may be sympathetic to "anti-Zionist" or "anti-imperialist" exploits or to revolutionary actions directed against South Africa, Rhodesia or Portugal; leftist Latin American states including Peru, Bolivia and Chile as well as Cuba may be sympathetic to anti-US gestures. Communist China, North Korea and North Vietnam are likely to be uncooperative in the event of a hijacking, but this will depend, in any particular case, on whether they see an advantage to be gained by being flexible. The situation is aggravated in the case of Communist China by the fact that it was not invited to The Hague Conference.

D. States not actual or potential direct threats to US citizens or property but which have resisted US efforts to develop effective legal instruments to deal with hijacking. France, protecting its political ties with third-world states, has been active in opposing US international initiatives. Belgium and the Scandinavians, while not overtly hostile, have not been enthusiastic in support.

E. States which, while supporting international joint action to enforce hijacking obligations in theory, are reluctant to bear any political or economic costs for achieving this objective. In this category, we might include West Germany, the United Kingdom, other European states and Japan. While the attitude of the USSR remains to be tested in practice, it is probable that it would fit into this category.

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SECTION II - Possible Sanction Actions

A. Multilateral Sanctions

1. ICAO

The ICAO Council resolution of October 1 called for consultations upon request of a contracting state, to determine what joint action, including suspension of civil air services, should be taken in accordance with international law in the event (a) hijacked passengers, crew or aircraft are detained by a state for "international blackmail purposes," contrary to the principles of Article 11 of the Tokyo Convention, or (b) a state refuses contrary to the principles of Articles 7 and 8 of the draft unlawful seizures convention, to extradite or prosecute hijackers involved in such blackmail cases. It should be noted that the resolution calls only for consultations, not automatic sanctions. It is recommendatory only and not legally binding on members of ICAO. Nevertheless, it does provide a framework for seeking joint action including multilaterally applied suspension of air services.

If we are successful in obtaining adoption and significant ratification of the draft sanctions convention we have proposed, this could be a more effective instrument for seeking multilateral sanctions.

2. UN

While we could in theory seek a UN Security Council resolution calling for imposition of mandatory sanctions against an offending state or states along the lines of SC resolutions 232, 253 and 277 on Southern Rhodesia (concerning severance of diplomatic, consular, trade and other relations), this is little more than a theoretical possibility. Such action under Chapter VII of the UN Charter would require a finding of a threat to the peace, breach of the peace, or act of aggression, and it is unlikely that there would be much support for such a finding based on a hijacking incident, even one as serious as the recent case involving the holding of hostages in Jordan. Action of a recommendatory nature,

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which would not require such a finding, might still meet considerable resistance and would add little to the basis for action already contained in the ICAO Council resolution of October 1. Either type of Council action would be subject to veto by any one of the five permanent Council members (United States, United Kingdom, France, USSR, Republic of China).

3. Embargo on International Financial Agency Assistance

We would have to be able to marshal a majority of the voting strength in the IBRD (and IDA) and in the IMF to block approval of loans or IMF standby assistance to target countries. We have only 24 percent voting power in these agencies. We could, however, use our influence to block or delay action and we might be able to get the support of some of the leading industrial states, who have important voting power in these institutions, on loans to countries who demonstrate a record of consistent uncooperativeness on hijacking.

In the case of soft loans in the Inter-American Development Bank we have veto power, and we are able to influence the consideration of specific projects at the "hard" window, but cannot unilaterally block loans if IDB management chooses to proceed despite US opposition. In the Asian Development Bank we and the Japanese are the dominant stockholders. With Japanese cooperation we can exert considerable leverage on loan decisions.

4. Private Boycotts

International private groups, such as IFALPA (the association of airline pilots), ASTA (travel agents), and IFTW (transport workers), have frequently shown a disposition to take boycott action in connection with particularly aggravated hijacking cases. They have generally held back, in the belief that governments should be given a chance to deal with the situation. An indication from the United States, or other responsible governments that such action would be favored might very well lead to the imposition of boycotts of states that are uncooperative in dealing with hijackings.

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B. Bilateral Sanctions

1. Aviation Services

Where a state demonstrably fails to take proper action under the Tokyo Convention or in the circumstances foreseen in the ICAO Resolution on "international black-mail" hijacking, we believe we would be within our legal rights to suspend all air services to and from such a state, whether or not we have a bilateral air transport agreement with that state. We believe the same legal arguments could be adduced even in instances of "non-blackmail" hijacking.

2. Travel

We could refuse to validate US passports to a particular country. While this might not legally cut off travel, it would undoubtedly discourage tourism.

3. Trade

a. Total Embargo on all Trade Relations

This would require invoking the "trading with the enemy act." The case would be weak and subject to challenge in Court; though lower courts, at least, have been willing to pay great deference to the Executive's judgment on such questions. A new proclamation expressly linking hijacking to national security, would be helpful.

If the target country were a GATT member, in the absence of a UN sanctions resolution, we might have considerable difficulty in justifying such action under the "security", or any other, exception and we might either seek a waiver from GATT or elect to ignore GATT. (We did not seek a GATT waiver for our action against Cuba, nor have the Cubans ever challenged us on this in GATT.)

Where we have a bilateral trade agreement, or FCN Treaty, with the target country, the problems would be similar.

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b. Denial of M-F-N Concessions

No existing authority would justify such action in response to a failure to take appropriate action to curtail hijacking. Specific legislative authorization would be required unless we could label a country as communist, or cite independent trade actions by the target country justifying retaliation.

Similar GATT and treaty considerations as in a. above would obtain.

c. Denial of Import Quotas

--Denial of import quotas on long staple cotton would require legislative action.

--If the President finds that a sugar quota is not in the national interest he may suspend it.

--Reduction or elimination of petroleum import quotas would probably require a finding by OEP that such action is required on security grounds.

--Cotton textile import quotas might be reduced to a limited extent by terminating or failing to renew existing bilateral agreements. Where no bilateral agreement exists, new quotas could be imposed if consistent with the criteria of the LTA. Imposition of quotas on participants or non-participants at lower levels than permitted by the LTA could be challenged in the courts by interested importers as outside the President's domestic legislative authority to carry out the LTA.

Such restrictions might give rise to GATT and bilateral agreements problems similar to those mentioned under a. above.

d. Export Control

In addition to authority under the Trading with the Enemy Act, broad or partial limitations on US exports to the target country could be instituted under

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the Export Administration Act and the Munitions Control Act by citing security or foreign policy grounds. Such limitations might be attacked in court on the ground that protection against hijacking is not the kind of foreign policy objective that can be enforced under these Acts.

Such restrictions might give rise to GATT and bilateral agreements problems similar to those mentioned under a. above.

4. Financial Assistance and Military Aid

We can, of course, unilaterally decide whether or not to extend Export-Import Bank loans, guarantees and insurance, AID grant or loan assistance as well as PL 480 sales, or military aid to a target country.

In regard to the Interest Equalization Tax levied on foreign borrowing in the United States and on purchases by US citizens of foreign bonds and notes, a developing country might be taken off the exempt list if statutory notification procedures are followed; however, such action would not find support in the purposes of the Interest Equalization Act. We could also put a developing country in a more restrictive category under the Foreign Direct Investment Controls on US direct investment abroad, but this action would similarly be outside the purposes of the FDIC program. In both cases, actions could probably be brought to test the validity of the action involved.

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SECTION III - Possible Target Countries and
Consideration of Action that Might be Taken

A. Cuba

Since 1962, almost sixty planes of US registry have been hijacked to Cuba and over fifty planes of other registry. It is noteworthy--well nigh miraculous--that to date neither a life nor a plane has been lost in these hijackings, although death or serious injury resulted from abortive hijacking attempts. US registered planes and their passengers have generally been returned promptly from Cuba. In many instances the hijacker has been jailed or otherwise given harsh treatment by the Cuban Government, to the point where 21 eventually left Cuba and were returned or turned themselves in for prosecution in the United States. We have been discussing with Cuba, through the Swiss Embassy in Havana, an arrangement for the return of hijackers, excluding those seeking political asylum. Cuba, however, continues to be regarded as a goal or haven for potential hijackers. This is particularly so in cases where the hijackers claim revolutionary motivation. The Castro Government continues to value its image as a model for revolutionaries and is unlikely to deal harshly with hijackers who act out of what Cuba views as political motives. As long as this is so, the danger of death to US citizens or destruction of property will be present.

On October 21, a Costa Rican plane was hijacked to Cuba. In this instance the hijackers, apparently Central American extremists, threatened the lives of American citizens unless other Central Americans in jail in Costa Rica were released. The jailed extremists were released by the Costa Rican Government almost immediately. However, the passengers were detained for over five days in Cuba. The plane was held for 20 days and only released on provision of a guarantee for \$65,000 in charges. There are no indications yet of any intent to prosecute or extradite the hijackers. While it may be difficult to prove a case of detention of the passengers, this was clearly a case of hijacking for international blackmail purposes.

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If the Cubans take no action against the hijackers of the Costa Rican plane, there would be a clear basis for invoking the ICAO Council Resolution of October 1. We have urged the Costa Ricans to seek extradition or prosecution in Cuba and have indicated we propose to follow up with Cuba. Costa Rica has this question under consideration. We could, as a second step, urge the Costa Ricans to call for consultations with Spain, Czechoslovakia and the USSR whose airlines serve Cuba, as well as Mexico to which the Cuban airline flies, and Portugal, Canada and France which extend technical landing rights to the Cuban airline. We could urge these states that provide civil air services to Cuba to consider suspending their services. We cannot be sanguine as to the cooperation such an approach would elicit. The Czechs and the Soviets would be unlikely to take an action hostile to Cuba despite their hard and loud demands that hijackers should be extradited. The Mexicans are already angered by the Cubans' lack of response to their requests for extradition of hijackers of Mexican aircraft and might cooperate. Spain may resist. She values her trade with Cuba and her airline's aviation business with Cuba. Portugal and possibly Canada might be willing to terminate the technical landing rights they provide Cuba.

B. Lebanon

The Government of Lebanon has as yet not acted to take into custody the Arab guerrillas who participated in the destruction of the PAA 747 by passing on explosives when the hijackers forced the plane to land at Beirut airport. Also, the Lebanese have just given a mild sentence (three years reduced to the actual nine months imprisonment served while awaiting trial) to a Frenchman (Belon) who hijacked a TWA plane to Beirut in January 1970. (It should be noted, nevertheless, that Western European countries which have prosecuted hijackers from Eastern Europe have also dealt out light sentences and, presumably, not all the sentences will be served.)

If the Government of Lebanon takes no action against the conspirators in the PAA 747 dynamiting, we would have

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grounds for invoking the ICAO Resolution of October 1. However, to be effective, a suspension of civil air services to Lebanon would have to be widespread since Beirut is served by a broad spectrum of foreign civil airlines.

Bilateral trade sanctions would offer only modest leverage on Lebanon. Exports to the United States are small (about \$10 million per annum) representing only about 5 percent of the country's total exports. On the other hand, Lebanon has been purchasing about \$90 million per annum from us. Our bilateral assistance program has been running at only modest levels. We provided only about \$7.5 million in PL 480 sales and \$100,000 in MAP assistance in FY 1970. Recent Export-Import Bank activity has also been low, although in FY 1969, Export-Import Bank loans, guarantees or insurance involving Lebanon totalled over \$50 million, mainly for aircraft.

Travel restrictions might have greater leverage. Tourism has long been important to Lebanon's balance of payments. Lebanon's tourist industry has already been suffering since the destruction caused by the six-day war in 1967 and successive military flare-ups in the Middle East since then. Although declining, US tourists entering Lebanon have been in the range of 50,000 per annum.

We have a bilateral air transport agreement with Lebanon and recently agreed to a cargo route for Lebanon air carriers to the United States. We have not yet provided the certification for a Lebanon carrier on this route.

We must, of course, recognize that any action we might take to sanction Lebanon would run counter to what has been our general approach of seeking to bolster this relatively moderate Arab regime, which faces a serious internal problem with the Arab guerrillas. Sanctions imposed by the United States and other Western States, against Lebanon, could seriously affect our efforts to bring about a Middle East settlement.

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C. UAR

In the past, the Government of the UAR has acted cooperatively, with regard to the treatment given passengers, crew and plane, in instances where a US plane has been hijacked to Egypt. In the case of the PAA 747 destruction on the ground in Cairo on September 7, although the hijackers were taken into custody, no move to prosecute them has been made. The UAR has also permitted the departure of Leila Khaled, who participated in the hijacking of and serious damage to a US plane hijacked to Damascus in August of 1969 and was also involved in the abortive hijacking attempt on September 6 of an El Al plane.

If the UAR takes no action against the hijackers who destroyed the PAA 747 plane, we would have grounds for invoking the ICAO Resolution of October 1. We have suggested to the United Kingdom, the Federal Republic of Germany and the Swiss (members of the "Bern Group" of countries) that they make independent and coordinated approaches to the UAR, as well as to Lebanon and Jordan. To be effective, the denial of civil air services would have to be widespread. The UAR is served by a long list of East and West European airlines, as well as African and Arab airlines.

If we were to attempt bilateral sanctions, we could not seriously affect the UAR economically and could only open the door to economic retaliation such as counter-embargo and action against oil companies.

US trade with the UAR is at only modest levels and the balance is in our favor. In 1969, we sold the UAR \$67 million and bought \$38 million. Included in our purchases have been long-staple cotton, considerably reduced from earlier years, and crude oil, almost exclusively company owned (Standard of Indiana). We recently concluded a bilateral cotton textiles agreement with the UAR under which the UAR can ship us about \$5 million per annum on textiles.

Other than a few scientific research projects, we have no assistance programs with the UAR, nor are we currently providing Export-Import Bank loans.

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We have a bilateral air transport agreement under which TWA serves Cairo (of marginal commercial value). The UAR has landing rights in New York, but has not exercised them. UAR earnings from US tourists are estimated at \$5 million annually.

Again, sanctions against the UAR, the key Arab State, insofar as a Middle East peace settlement is concerned, would have repercussions adverse to attainment of this objective.

D. Jordan

There has been no indication that the Government of Jordan has made any effort to take into custody the fedayeen involved in the hijacking and destruction of the three planes blown up at Dawson Field on September 14.

If Jordan takes no action against the hijackers who destroyed the aircraft at Dawson Field, we would have grounds for invoking the ICAO Resolution of October 1. We have no direct civil air services with Jordan. However, Jordan is served by the Dutch, Soviets, Italians and several Arab states. Jordan airlines also fly to Greece, Turkey and Germany, as well as to nearby Arab states.

Our imports from Jordan are insignificant. However, our exports have been running at as much as \$70 million per annum. Over the years 1946 to 1970 we have provided about \$214 million in military assistance to Jordan. During FY 1970 our assistance program consisted of only about \$1.6 million in technical assistance, \$600,000 in PL 480 sales, and \$210,000 in MAP assistance. Plans for 1971 involve increased aid. Tourism, once important, has been cut to very low levels as a result of the 1967 war and subsequent disturbances and civil war.

In the case of Jordan--and also Lebanon--sanctions might put us at cross purposes with our efforts to bolster the regime in its dealings with the fedayeen. Were we to impose sanctions against Jordan, our efforts to bring about a Middle East settlement could very well be wiped out.

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Syria

In August of 1969, Arab guerrillas hijacked a TWA 707 to Damascus. After passengers were disembarked damage estimated at from \$3 to 5 million was wreaked on the plane. Although most of the passengers were allowed to leave, two Israeli passengers were held for an extended period. While the hijackers were taken into custody there has never been any indication they were actually prosecuted. In fact, Leila Khaled, one of the hijackers, surfaced this year as a participant in the attempted hijacking of the El Al plane.

Bilateral Syria-US trade is very small nor has there been any US tourism to Syria of any significance since 1967. We do not provide Syria with economic and military assistance.

We have a bilateral air transport agreement with Syria, but it does not provide for a Syrian route to the United States. Pan Am makes a weekly stop at Damascus. The Syrians have made it clear that unless we continue to provide some air service to Damascus, they will not permit US planes to overfly their country. Pan Am places great value on these overflight rights, an important link in its round-the-world flights. It also would be useful to TWA to be able to overfly Syria.

F. France

Our various initiatives in ICAO to develop international legal instruments to deal with hijacking have not always obtained widespread cooperation. Most recently, and most egregiously, the French, perhaps determined to maintain their ties with Arab and other third world countries, were particularly uncooperative with respect to our efforts to obtain adoption of the ICAO resolution on "international blackmail hijacking" and to promote consideration of our draft convention on sanctions. They have also proposed a number of weakening amendments to a draft UNGA resolution on this subject. The question of French cooperation on a specific case may arise, should Belon, the French hijacker, recently freed in Lebanon, return to France and should we elect to request his extradition.

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We have a bilateral air transport agreement with France under which the French have recently called for consultations. We can anticipate they will ask for additional landing rights. We doubt that they have a case and would be unlikely to extend them new rights even absent our concerns on hijacking. We could show our displeasure by refusing to meet with them. However, we are obligated under the bilateral to consult when requested.

We, of course, have extensive trade and financial relations with France as we do with all leading industrial states. However, we doubt these could afford us opportunities to take action against France. Inevitably, action would give rise to counter action, with a potential spiraling effect that could have broad political as well as economic implications. Moreover, we are on record against taking trade action affecting France for other than trade reasons.

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